

AMENDED IN SENATE JUNE 16, 2010

AMENDED IN ASSEMBLY APRIL 22, 2010

AMENDED IN ASSEMBLY APRIL 19, 2010

AMENDED IN ASSEMBLY MARCH 15, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

Assembly Joint Resolution

No. 29

Introduced by Assembly Member Feuer

(Principal coauthor: Assembly Member Portantino)

(Coauthors: Assembly Members Ammiano, Block, Blumenfield, Brownley, Fuentes, Huffman, Jones, Monning, Salas, Saldana, Skinner, Torlakson, Adams, Arambula, Bass, Beall, Bradford, Buchanan, Charles Calderon, Carter, Chesbro, Coto, Davis, De La Torre, De Leon, DeVore, Emmerson, Eng, Evans, Fong, Galgiani, Hall, Harkey, Hayashi, Hernandez, Hill, Jeffries, Lieu, Bonnie Lowenthal, Ma, Mendoza, Nava, Nestande, Nielsen, John A. Perez, V. Manuel Perez, Ruskin, Solorio, Swanson, Torres, Torrico, and Yamada)

(Coauthors: Senators Alquist, Kehoe, and Leno)

January 21, 2010

Assembly Joint Resolution No. 29—Relative to domestic partners tax equity.

LEGISLATIVE COUNSEL'S DIGEST

AJR 29, as amended, Feuer. Federal income tax: ~~domestic partners~~ *same-sex couples*.

This measure would ask the Internal Revenue Service to ~~reconsider~~ a ~~specified memorandum~~ and issue a new ~~memorandum~~ *ruling* with

respect to the federal income tax treatment ~~of property rights~~ of registered domestic partners and same-sex ~~spouses~~ married couples.

Fiscal committee: no.

1 WHEREAS, On May 28, 2010, the Internal Revenue Service
2 (IRS) issued a Chief Counsel advisory memorandum number
3 201021050 (CCA) regarding federal tax treatment of California
4 registered domestic partners, which recognized changes in
5 California law between 2005 and 2007 that expanded the property
6 rights and obligations of registered domestic partners and that
7 characterized their income as community property; and

8 WHEREAS, As a result of the IRS CCA, registered domestic
9 partners in California must now combine their income and each
10 report half of it on his or her federal tax return; and

11 WHEREAS, The IRS CCA did not address the federal tax
12 treatment of income of California same-sex married couples; and

13 WHEREAS, California statutes (see Chapter 893 of the Statutes
14 of 2001, Chapter 421 of the Statutes of 2003, and Chapter 802 of
15 the Statutes of 2006) and case law (*In re Marriage Cases* (2008)
16 43 Cal.4th 757; and *Strauss v. Horton* (2009) 46 Cal.4th 364)
17 confirm that registered domestic partners and married same-sex
18 couples whose marriages remain valid under California law have
19 the same rights and responsibilities under California law as
20 heterosexual married couples, including those rights and
21 responsibilities related to community property, and further, that
22 California income tax reporting is the same for registered domestic
23 partners and married individuals; and

24 WHEREAS, Property, including income, acquired while
25 domiciled in California by registered domestic partners or married
26 same-sex couples whose marriages are still valid in California is
27 community property under California law; and

28 WHEREAS, Federal tax law cited in the IRS CCA holds that the
29 characteristics of property ownership, including community
30 property, are determined by the states, and taxation of that property
31 is determined by the federal government; and

32 WHEREAS, The Supreme Court of the United States has held
33 that the IRS must defer to state law determining property
34 ownership, including the existence of community property; and

35 WHEREAS, Pursuant to a Presidential Memorandum Regarding
36 Preemption issued by the White House on May 20, 2009,

1 *preemption of state law by executive departments and agencies*
2 *should be undertaken only with full consideration of the legitimate*
3 *prerogatives of the states and with a sufficient legal basis for*
4 *preemption; now, therefore, be it*

5 *RESOLVED, BY THE ASSEMBLY AND SENATE OF THE*
6 *STATE OF CALIFORNIA, JOINTLY, That the Legislature of the*
7 *State of California asks the IRS to issue a Revenue Ruling that*
8 *applies the legal analysis and conclusions of the IRS CCA to both*
9 *California registered domestic partners and same-sex married*
10 *couples; and be it further*

11 *RESOLVED, That the Legislature requests that, consistent with*
12 *established legal precedents, the IRS defer to California law on*
13 *treatment of property belonging to same-sex spouses, including*
14 *the existence of community property, so that for tax years beginning*
15 *after December 31, 2010, when filing separate federal income tax*
16 *returns, each same-sex spouse must include in his or her gross*
17 *income one-half of the community's income; and be it further*

18 *RESOLVED, That for tax years beginning before June 1, 2010,*
19 *the Legislature requests that the Revenue Ruling referred to above*
20 *further determine that same-sex married couples may, but are not*
21 *required to, amend their returns to report income in accordance*
22 *with the Revenue Ruling; and be it further*

23 *RESOLVED, That the Chief Clerk of the Assembly transmit*
24 *copies of this resolution to the President and Vice President of the*
25 *United States, to the Speaker of the House of Representatives, to*
26 *the Majority Leader of the Senate, to each Senator and*
27 *Representative from California in the Congress of the United*
28 *States, to the Secretary of the Treasury, to the Commissioner of*
29 *the Internal Revenue Service, and to the Internal Revenue Service*
30 *Office of Chief Counsel.*

31 ~~*WHEREAS, The Internal Revenue Service (IRS) issued a*~~
32 ~~*memorandum (Office of Chief Counsel IRS Memorandum*~~
33 ~~*200608038 dated February 24, 2006), which indicated that an*~~
34 ~~*individual who is a registered domestic partner in California must*~~
35 ~~*report all of his or her income earned from the performance of his*~~
36 ~~*or her personal services, notwithstanding the California Domestic*~~
37 ~~*Partner Rights and Responsibilities Act of 2003; and*~~

38 ~~*WHEREAS, As a consequence, for federal income tax purposes*~~
39 ~~*California registered domestic partners could not claim a*~~
40 ~~*community property interest in the income of both partners, but*~~

1 instead had to report all of each partner's income separately;
2 without reference to the income of the other partner; and

3 WHEREAS, The IRS memorandum found that state community
4 property laws apply only to a husband and wife in a heterosexual
5 marriage, and not outside that context; and

6 WHEREAS, The IRS memorandum further indicated that the
7 rights afforded domestic partners under the California Domestic
8 Partner Rights and Responsibilities Act of 2003 were not made an
9 incident of marriage by the inveterate policy of the state and that
10 the relationship between registered domestic partners was not
11 marriage under California law, and that accordingly they could
12 not file separately with each claiming one-half of the community's
13 total earned income for federal tax purposes; and

14 WHEREAS, Federal case law holds that the characteristics of
15 property ownership, including community property, are determined
16 by the states, and taxation of that property is determined by the
17 federal government; and

18 WHEREAS, The Supreme Court of the United States has held
19 that the IRS must defer to state law determining property
20 ownership, including the existence of community property; and

21 WHEREAS, Pursuant to a Presidential Memorandum Regarding
22 Preemption issued by the White House on May 20, 2009,
23 preemption of state law by executive departments and agencies
24 should be undertaken only with full consideration of the legitimate
25 prerogatives of the states and with a sufficient legal basis for
26 preemption; and

27 WHEREAS, California statutes (see Chapter 893 of the Statutes
28 of 2001, Chapter 421 of the Statutes of 2003, and Chapter 802 of
29 the Statutes of 2006) and case law (In re Marriage Cases (2008)
30 43 Cal.4th 757; and Strauss v. Horton (2009) 46 Cal.4th 364)
31 confirm that registered domestic partners and married same-sex
32 couples whose marriages remain valid under California law have
33 the same rights and responsibilities under California law as
34 different-sex married couples, including those rights and
35 responsibilities related to community property, and further, that
36 California income tax reporting is the same for registered domestic
37 partners and married individuals; and

38 WHEREAS, Property, including income, acquired while
39 domiciled in California by registered domestic partners or married

1 same-sex couples whose marriages are still valid in California is
2 community property under California law; now, therefore, be it

3 *Resolved, by the Assembly and Senate of the State of California,*
4 *jointly,* That the Legislature of the State of California asks the IRS
5 to reconsider Memorandum 200608038 and issue a new
6 memorandum based on the fact that settled federal law
7 acknowledges the state's role in defining property rights and the
8 federal government's role in deciding how it will be taxed for
9 federal purposes; furthermore, the enactment of SB 1827 (Chapter
10 802 of the Statutes of 2006) corrected an exception for state income
11 tax purposes of earned income from registered domestic partners'
12 community property under AB 205 (Chapter 421 of the Statutes
13 of 2003), such that California registered domestic partners and
14 same-sex spouses now are required to file state income tax returns
15 using the same rules as are applicable to heterosexual spouses;
16 including the choice between filing jointly or separately with a
17 reference to the filer's marital or registration status, thus making
18 California income tax reporting the same for registered domestic
19 partners and married individuals regardless of sexual orientation;
20 and be it further

21 *Resolved,* That the Legislature requests that, consistent with
22 established legal precedents, the IRS defer to California law on
23 treatment of property belonging to registered domestic partners
24 and same-sex spouses, including the existence of community
25 property, so that when filing separate federal income tax returns,
26 each registered domestic partner and same-sex spouse should
27 include in his or her gross income one-half of the community's
28 income; and be it further

29 *Resolved,* that the Chief Clerk of the Assembly transmit copies
30 of this resolution to the President and Vice President of the United
31 States, to the Speaker of the House of Representatives, to the
32 Majority Leader of the Senate, to each Senator and Representative
33 from California in the Congress of the United States, to the
34 Secretary of the Treasury, to the Commissioner of the Internal

1 ~~Revenue Service, and to the Internal Revenue Service Office of~~
 2 ~~Chief Counsel.~~

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5 **CORRECTIONS:**

6 **Digest—Page 1.**

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